

AG Contract No. KR03-1291TRN
ADOT ECS File No. JPA 03-083
Project No.: CM-PEO-0(007)A
TRACS No.: SS554 03D
Project: Multi-Use Path/UnderPasses

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PEORIA

THIS AGREEMENT is entered into 31 December, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE CITY OF PEORIA acting by and through its MAYOR and CITY COUNCIL (the "City")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
 2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
 3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
 4. Such project within the boundary of the City has been selected by the City and has been submitted to the Federal Highway Administration ("FHWA") for its approval.
 5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.
 6. The City, in order to obtain federal funds for the design of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA.
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NO. 26503
Filed with the Secretary of State
Date Filed: 12/31/03

Janice K. Brewer
Secretary of State

By: Darryl D. Haenewold

7. The work embraced in this agreement is to design a Multi-Use path and Under Passes on New River Road from Northern Avenue to Peoria Avenue at an estimated cost of:

Estimated Design Cost (TRACS No. SS554 03D)	\$110,000.00
Estimated Federal-aid funds @ 94.3% of \$106,045.00 (capped)	\$100,000.00
Estimated City Funds @ 5.7%	\$ 6,045.00
Estimated City Funds @ 100%	\$ 3,955.00
<i>Estimated Total City Funds</i>	<u>\$ 10,000.00</u>

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The cost of the analysis and design work covered by this agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

2. Therefore, the City agrees to deposit funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid (capped) received.

3. The State will reimburse the City with federal funds for design work addressed under this agreement at 94.3% of the project cost capped at \$106,045.00.

4. The City will provide any required preliminary engineering and planning studies, the environmental analysis and design of the project. As required by the FHWA, the State will provide design review of the project plans, studies and related documents. And when appropriate provide comments which will be incorporated into the design documents.

5. The City may request the State, as authorized agent for the City, and all at City expense, to perform certain work and prepare certain documents required by the Federal Highway Administration to qualify certain, highway, bridge and railroad grade crossing projects for and to receive Federal funds. Such work may consist of, but is not specifically limited to, the review and approval of the City prepared environmental documents, the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations, review of reports, design plans, maps, and specifications, geologic materials testing and analysis; right-of-way related activities (when specifically authorized by, for and on behalf of the City, and at no cost to the State) and such other related tasks essential to the achievement of the objectives of this agreement.

6. Should some unforeseen conditions or circumstances increase the cost of said work required, by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in the project.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is understood and agreed that the State's participation is confined solely to securing federal aid. Any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City. The City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever which is caused by any activity, condition, or event arising out of the

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performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual unless assumed by another entity.

3. This agreement shall become effective upon filing with the Secretary of State

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007

City of Peoria
Jeff Sargent
Park Projects Administrator
8401 W. Monroe Street
Peoria, AZ 85345

9. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

11. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

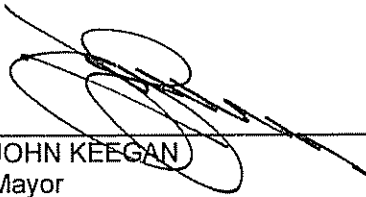
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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written


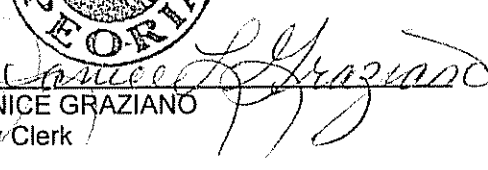
CITY OF PEORIA

STATE OF ARIZONA

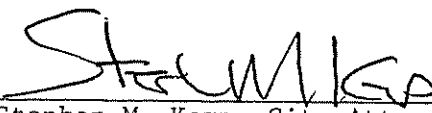
Department of Transportation

By 
JOHN KEEGAN
Mayor

By 
DALE BUSKIRK, Division Director
Transportation Planning Division

ATTEST 
By 
JANICE GRAZIANO
City Clerk

APPROVED AS TO FORM:

By 
Stephen M. Kemp, City Attorney

G-03-083-Peoria-CMAQ
17 Sept2003-ly

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RESOLUTION NO. 03-140

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE DESIGN OF A TRAIL AND TRAIL UNDERPASSES ALONG NEW RIVER BETWEEN NORTHERN AVENUE AND PEORIA AVENUE.

WHEREAS, Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of roadside markings.

WHEREAS, the Arizona Department of Transportation (ADOT) is responsible for the administration of the program within the State, called the Arizona Transportation Enhancement Program (AzTEP); and

WHEREAS, the Council of the City of Peoria finds that application by the City to the AzTEP program is in the best interests of the City; and

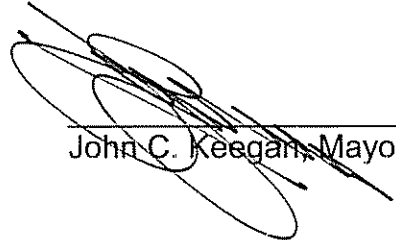
WHEREAS, the procedures established by ADOT require an applicant to certify by resolution the approval of applications, signature authorization, the availability of local matching funds, and authorization to sign a Participant Agreement with ADOT.

NOW, THEREFORE, BE IT RESOLVED THAT the Mayor and City Council:

1. Certify that participation in the AzTEP is consistent and compatible with all adopted plans and programs of the Mayor and City Council for surface transportation activities; and
2. Agree to comply with all appropriate procedures, guidelines, and requirements established by ADOT as a part of the application process; and
3. Certify that the City of Peoria will comply with all appropriate state and federal regulations, policies, guidelines, and requirements as they relate to the application; and
4. Certify that the City of Peoria has allocated, and, if awarded, will spend, matching funds in the amount of \$10,000 from the City's General Fund available and dedicated to satisfy the obligations incurred by participation in AzTEP; and

5. Appoint the City Manager and Community Services Director as agents of the Mayor and City Council to conduct all negotiations, execute and submit all documents, including, but not limited to, applications, agreements, amendments, billing statements, and such other documents as may be necessary for participation in the AzTEP.

PASSED, ADOPTED AND APPROVED BY THE City of Peoria this 2nd day of December 2003.



John C. Keegan, Mayor





Janice L. Graziano, City Clerk

APPROVED AS TO FORM:



Stephen M. Kemp, City Attorney

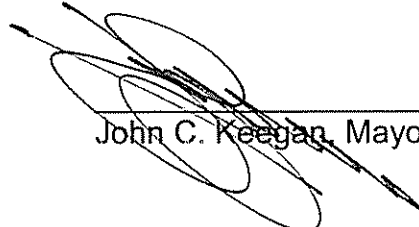
REVIEWED BY:



Terrence L. Ellis, City Manager

I, the undersigned, John C. Keegan, being the duly appointed and qualified Mayor of the City of Peoria, certify that the foregoing resolution No. 03-140 is a true, correct and accurate copy of Resolution No. 03-140 passed and adopted at a regular meeting of the City of Peoria the 2nd of December 2003 at which a quorum was present and voted in favor of said December 2, 2003 Resolution.

Given under my hand and seal this 8th of December 2003.



John C. Keegan, Mayor

APPROVAL OF THE CITY OF PEORIA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF PEORIA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this 17th day of October, 2003

Stephen J. Brung for
City Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-1291TRN (**JPA 03-083**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED December 22, 2003.

TERRY GODDARD
Attorney General



SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:dgr
Attachment
823177